

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA )  
UTILITY REGULATORY COMMISSION'S )  
INVESTIGATION OF MATTERS RELATED )  
TO THE CONTINUED BUSINESS )  
PRACTICES OF RIVER'S EDGE UTILITY, )  
INC., IN THE STATE OF INDIANA )  
PURSUANT TO INDIANA CODE 8-1-2-1(A), )  
8-1-2-58, 8-1-2-69, 8-1-2-89, et seq. )

CAUSE NO. 43115

APPROVED: SEP 13 2006

**BY THE COMMISSION:**

David W. Hadley, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

Based on documentation received in August 2006 by the Indiana Utility Regulatory Commission's ("Commission") Gas/Water/Sewer Division, the Commission finds it appropriate to investigate the on-going issue(s) of River's Edge Utility, Inc.'s ("Petitioner" or "River's Edge")<sup>1</sup> lawful authority to operate a sewage disposal company, under the certificate of territorial authority ("CTA") granted by this Commission under Cause No. 42234 (*Ind. Util. Reg. Comm'n*, February 5, 2003).

1. **Commission Jurisdiction and Authority to Review.** Ind. Code 8-1-2-1(a) defines "public utility" to include water and sewer utilities:

"Public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by the court, that may own, operate, manage, or control any plant or equipment within the state for the:

(3) Collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste....

Ind. Code 8-1-2-58 provides the Commission with broad authority to investigate public utilities:

<sup>1</sup> Throughout previous pleadings Petitioner is referred to as "Rivers Edge." The documents evidencing the change in corporate name from Rivers Edge Community, Inc. to the current entity state that the new entity was to have the name "River's Edge Utility, Inc." We adopt the name as indicated in the corporate documents on the premise that this is the intended spelling.

Whenever the Commission shall believe...that an investigation of any matters relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same, with or without notice.

Further, I.C. 8-1-2-59 provides the Commission with authority to conduct a formal hearing of a matter it investigates. After such an investigation, the Commission may make such an order as to "fix just and reasonable measurements, regulations, acts, practices, or service to be furnished, imposed, observed, and followed in the future[.]" I.C. 8-1-2-69. As to the granting of a CTA to a sewage disposal company, the Commission continues to have jurisdiction regarding whether or not the company is providing the requisite reasonably adequate sewage disposal services. I.C. 8-1-2-89(h). Accordingly, this Commission has jurisdiction over the parties and the subject matter of this proceeding.

**2. Background and Procedural History.** On May 15, 2002, River's Edge filed a Petition with the Commission for a CTA to provide water and sewer service in Clark County, Indiana. The cause was captioned under Cause No. 42234. The Commission convened an evidentiary hearing on December 19, 2002, and issued a final order granting the CTA on February 5, 2003.

One piece of evidence noted in the final order was a 1989 letter from the Indiana State Department of Health ("ISDH"), which indicated approval of Petitioner's plans and specifications for the construction of a sewage system. This was offered by Petitioner as evidence in support of its lawful power and authority to be granted a CTA. The Commission also noted that the Petitioner's system had been constructed and in operation for thirteen (13) years, which indicated to the Commission that Petitioner had the financial ability to install, commence and maintain the service. While the Commission "did not condone [Petitioner's] operation" without a CTA for thirteen years, it found that the existence of Petitioner's customers showed a public need for the service. Based on this and other evidence, the Commission found that Petitioner met the requirements to be granted a CTA pursuant to I.C. 8-1-2-89.

In August 2006, the Commission's Gas/Water/Sewer Division received documentation of correspondence between River's Edge and the ISDH. This correspondence revealed that on February 28, 1995, as a result of several violations observed by ISDH in March and April 1994, ISDH revoked the 1989 approval of Petitioner's plans and specifications for construction of a sewer utility. The ISDH stated that to obtain a permit and proceed with construction of the proposed system, Petitioner needed to provide the following:

[An a]s-built plot plan of the well sites....[an] accurate topographic map of each existing and proposed mound site...number of independent RV camp sites, residential mobile home lots, subdivision lots with the number of bedrooms per existing or proposed home[s]....[and] revised plans of the mound systems and associated dosing and lift stations[.]

Letter from Durland H. Patterson, Manager, Sanitary Engineering, ISDH, to Mr. David Stone, "Re: Rivers Edge Development," February 28, 1995, at p. 2.

On September 12, 2000, the ISDH again wrote to River's Edge, stating that a review of Petitioner's re-submitted plans showed that they had been changed, without approval from ISDH, from those originally approved by ISDH. The ISDH again requested that Petitioner submit revised plans, and noted the following:

[a]lthough homeowners [sic] association documents were submitted for the cluster systems, you must go through the Office of Consumer Council [sic] and the [Commission] to become a utility since you are selling water to the customers in both your subdivision cluster and campground/residential cluster systems and have septic systems in commonality for both clusters of homes. We will not approve revised cluster plans for both cluster septic systems unless we have received documentation from both the Office of Consumer Council [sic] and the [Commission] that you have completed this process.

Letter from Howard W. Cundiff, P.E., Supervisor, Plan Review, Division of Sanitary Engineering, ISDH, to Dave Stone, "Re: Revised Plans and Specifications for River's Edge Development" at p.3.

Further correspondence occurred in 2006 between Petitioner, ISDH, and various Clark County officials, resulting in a letter from ISDH to Petitioner on August 1, 2006,<sup>2</sup> in which ISDH stated the following:

Our review [in September 2000] of all the septic systems identified many areas of non-compliance...I am deeply concerned that the revised plans we requested in our review have never been submitted to address those areas of noncompliance ....Now we are again addressing complaints that you have added additional connections to the existing systems without our approval....As a start we are requesting that no-later [sic] than forty-five days from date of receipt of this letter that we receive up-to-date as-built plans that include all changes to the facilities since the on-site sewage systems were original [sic] approved in 1989.

Letter from Robert J. Hilton, P.E., DEE, Supervisor, Plan Review, Sanitary Engineering, ISDH, to Mrs. Carolyn Stone, "Re: River's Edge Development" (emphasis in original.)

The Commission, having reviewed the recently received correspondence and the final order in Cause No. 42234, and being sufficiently advised, finds that exercise of our investigative authority is necessary.

**3. Scope of Proceeding.** In its CTA request in 2002, Petitioner proffered the 1989 ISDH letter as evidence that its plans and specifications for the construction of a sewer system had been approved. This 1989 letter was one piece of evidence considered by the Commission in

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<sup>2</sup> ISDH copied the Commission's Gas/Water/Sewer Division on the August 1, 2006 letter; the previous letters of 1989, 1995 and 2000 did not.

its determination of whether or not Petitioner met the criteria for the grant of a CTA pursuant to I.C. 8-1-2-89.<sup>3</sup> The correspondence recently received by the Commission appears to indicate that Petitioner's representation in 2002 that it had then-current authority from the ISDH to construct a sewage system was inaccurate. Therefore, the Commission finds it appropriate to investigate the issue(s) of Petitioner's continued lawful authority to operate under the CTA issued by this Commission under Cause No. 42234.


**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. An investigation into matters related to River's Edge Utility, Inc.'s, continued lawful authority to operate, under the CTA issued by this Commission under Cause No. 42234 is hereby commenced.
2. A Prehearing Conference is hereby scheduled in this Cause for 9:30 a.m., Monday, October 16, 2006, in Room E306 of the Indiana Government Center South, Indianapolis, Indiana.
3. This Order constitutes *Notice of Matters under Investigation* pursuant to I.C. 8-1-2-59.
4. This Order shall be effective on and after the date of its approval.

**HARDY, LANDIS, SERVER, AND ZIEGNER CONCUR; HADLEY ABSENT:**

**APPROVED: SEP 13 2006**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**



**Brenda A. Howe**

**Acting Secretary to the Commission**

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<sup>3</sup> Pursuant to I.C. 8-1-2-89(e), the Commission must determine whether an entity petitioning for a CTA has the lawful power and authority to apply for and operate the service; the financial ability to install, commence and maintain the service; and that public convenience and necessity require that the service be rendered in the proposed areas by the applicant in question.